

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KENNETH JOHN PENA,

Defendant.

No. 17-CR-30-LRR

**ORDER REGARDING
MAGISTRATE'S REPORT AND
RECOMMENDATION
CONCERNING DEFENDANT'S
GUILTY PLEA**

I. INTRODUCTION AND BACKGROUND

On September 14, 2017, a one-count Superseding Indictment was filed against Defendant Kenneth John Pena. On November 20, 2017, Defendant appeared before United States Chief Magistrate Judge C.J. Williams and entered a plea of guilty to Count 1 of the Superseding Indictment. On November 21, 2017, Judge Williams filed a Report and Recommendation in which he recommended that Defendant's guilty plea be accepted. No objections to Judge Williams's Report and Recommendation were filed. The court, therefore, undertakes the necessary review of Judge Williams's recommendation to accept Defendant's plea in this case.

II. ANALYSIS

Pursuant to statute, this court's standard of review for a magistrate judge's report and recommendation is as follows:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.

28 U.S.C. § 636(b)(1). Similarly, Federal Rule of Criminal Procedure 59(b) provides for review of a magistrate judge's report and recommendation on dispositive motions, where objections are made, as follows:


The district judge must consider de novo any objection to the magistrate judge's recommendation. The district judge may accept, reject, or modify the recommendation, receive further evidence, or resubmit the matter to the magistrate judge with instructions.

Fed. R. Crim. P. 59(b)(3).¹

In this case, no objections have been filed, and it appears to the court upon review of Judge Williams's findings and conclusions that there is no ground to reject or modify them. Therefore, the court **ACCEPTS** Judge Williams's Report and Recommendation of November 21, 2017, and **ACCEPTS** Defendant's plea of guilty in this case to Count 1 of the Superseding Indictment. Accordingly, the pending Motion to Suppress (docket no. 37) is **DENIED AS MOOT**.

IT IS SO ORDERED.

DATED this 8th day of December, 2017.



LINDA R. READE, JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA

¹ *United States v. Cortez-Hernandez*, 673 F. App'x 587, 590-91 (8th Cir. 2016) (per curiam), suggests that a defendant may have the right to de novo review of a magistrate judge's recommendation to accept a plea of guilty even if no objection is filed. *But see* 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59(b). The district court judge will undertake a de novo review of the Report and Recommendation if a written request for such review is filed within fourteen days after this order is filed.